

NICKEL (AGNEW) AGREEMENT.

No. 98 of 1976.

AN ACT to amend the Nickel (Agnew) Agreement Act, 1974.

[Assented to 12th November, 1976.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Nickel (Agnew) Agreement Act Amendment Act, 1976.*

Short title
and
citation.

(2) In this Act the Nickel (Agnew) Agreement Act, 1974 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Nickel (Agnew) Agreement Act, 1974-1976.

Section 2
amended.

2. Section 2 of the principal Act is amended—
- (a) by adding before the word “Schedule” in line two of the interpretation “the Agreement” the word “First”;
 - (b) by adding after the word “provisions” in line five of the interpretation “the Agreement” the passage “and, except in section 3 of this Act, by the Variation Agreement”;
 - (c) by deleting the passage “Agreement.” appearing at the end of the interpretation “the Joint Venturers” and substituting the passage “Agreement;” ; and
 - (d) by adding at the end thereof the following interpretation—

“the Variation Agreement” means the Variation Agreement a copy of which is set out in the Second Schedule to this Act. .

Section 3A
added.

3. The principal Act is amended by adding after section 3 the following section—

Ratification
of the
Variation
Agreement.

3A. The Variation Agreement is hereby ratified. .

Schedule
amended.

4. The Schedule to the principal Act is amended by deleting the heading “SCHEDULE.” and substituting the following headings—

THE SCHEDULES.

FIRST SCHEDULE. .

Second
Schedule
added.

5. The principal Act is amended by adding at the end thereof the following Schedule—

SECOND SCHEDULE.

THIS AGREEMENT made this Third day of September one thousand nine hundred and seventy-six BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part and WESTERN SELCAST (PTY) LIMITED a company incorporated under the Companies Act, 1961 of the State of New South Wales and registered in the State of Western Australia as a foreign company and having its registered office at 50 St George's Terrace Perth and MOUNT ISA MINES LIMITED a company incorporated under the Companies Act, 1961 of the State of Queensland and registered in the State of Western Australia as a foreign company and having its registered office at 220 St George's Terrace Perth (hereinafter collectively called "the Joint Venturers" in which term shall be included their respective successors and permitted assigns and appointees) of the other part.

WHEREAS the parties are the parties to and desire to amend the agreement between them dated the 21st day of November, 1974 referred to in section 2 of the Nickel (Agnew) Agreement Act, 1974 (which agreement is hereinafter referred to as "the principal agreement").

NOW THIS AGREEMENT WITNESSETH—

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purposes of the principal agreement. Interpretation.

2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to the 31st day of December, 1976. Initial obligations of the State.

3. The provisions of this Agreement shall not come into operation unless and until a Bill to approve and ratify this Agreement is passed by the Legislature of the State and comes into operation as an Act. Ratification and operation

4. The principal agreement is hereby varied as follows—
 - (1) Recital (b) is amended by adding after the words "in the Agnew area" in line two, the passage "(or at such other site or sites as the parties hereto may agree)";

(2) Clause 1 is amended as to the definition of "mining areas" by substituting for the passage "plan marked "A" " in lines two and three, the passage "plan marked "A1" ";

(3) Clause 6 is amended as to subclause (1)—

(a) by substituting for the passage "1975" in line one, the passage "1976"; and

(b) by substituting for the passage "one million (1 000 000)" in line nine, the passage "three hundred thousand (300 000)";

(4) by adding after Clause 6 a new Clause 6A as follows—

Increased capacity of project.

6A. (1) The Joint Venturers shall continue to investigate their field and office engineering studies and market and finance studies as to the feasibility of increasing the annual capacity of the mining and treatment plant referred to in subclause (1) of Clause 6 from three hundred thousand (300 000) tonnes of ore to one million (1 000 000) tonnes of ore.

(2) The Joint Venturers shall keep the State fully informed in writing at least annually as to the progress and results of their operations under subclause (1) of this Clause.

(5) by substituting for subclause (2) of Clause 11 the following subclause—

Public Roads to be constructed by the State.

(2) The State shall construct or cause to be constructed new public roads suitable for the Joint Venturers' operations hereunder in accordance with the requirements of the Commissioner of Main Roads as follows—

(a) an unsealed road from Leonora extending to a point (to be agreed between the parties) near the Yakabindi Homestead (in this subclause called "the Leonora-Yakabindie road"). That part of the Leonora-Yakabindie road from Leonora to the turn-off to the minesite (in this subclause called "the turn-off") shall be sealed by the State to a width of not less than seven decimal four (7.4) metres. That part of the Leonora-Yakabindie road from the turn-off to the Yakabindie Homestead shall be constructed to a standard similar to the existing Leonora-Wiluna main road. The Joint Venturers shall pay to the State at the times and in the manner required by

the State one half of the cost of the construction (including investigation survey and design) of the Leonora-Yakabindie road and one half of the cost of the sealing referred to in this paragraph. The State shall use its best endeavours to complete the construction of the section between the turn-off and the connecting point referred to in paragraph (c) of this subclause prior to the date that the Joint Venturers' mining and treatment plant comes into operation. The balance of the construction and sealing referred to in this paragraph shall be completed within such periods as the Commissioner of Main Roads determines, after consultation with the Joint Venturers, but not earlier than five (5) years after the date of approval of the roads proposal under Clause 7 unless the parties otherwise agree.

- (b) an unsealed road connecting the turn-off with the townsite. The State shall use its best endeavours to complete the construction of such road prior to the date that the Joint Venturers' mining and treatment plant comes into operation. Such road shall be sealed by the State to a width of not less than seven decimal four (7.4) metres within such periods as the Commissioner of Main Roads determines, after consultation with the Joint Venturers, but not earlier than five (5) years after the date of approval of the roads proposal under Clause 7 unless the parties otherwise agree. The Joint Venturers shall pay to the State at the times and in the manner required by the State one half of the cost of the construction (including investigation survey and design) and sealing of such road.
- (c) an unsealed road connecting a point to be agreed on the Leonora-Yakabindie road to a point to be agreed on the existing Leonora-Wiluna road. Such road shall be constructed to a standard similar to the existing Leonora-Wiluna road. The State shall use its best endeavours to complete the construction of such road prior to the date

that the Joint Venturers' mining and treatment plant comes into operation. The Joint Venturers shall pay to the State at the times and in the manner required by the State one half of the cost of the construction (including investigation survey and design) of such road.

(6) Clause 12 is amended as follows—

(a) as to subclause (1) by substituting for subclause (1) the following subclause—

Railway.

(1) Subject to the by-laws made under the Government Railways Act, 1904 (insofar as those by-laws are not inconsistent with this Agreement) and subject to the provisions of this Clause the Joint Venturers shall in accordance with their approved proposals consign at their own risk, and the State shall cause the Railways Commission to transport by rail—

(a) (i) all the Joint Venturers' production of nickel-containing products from the railhead at Leonora to any processing plant, port, or ports, in a location approved by the Minister;

(ii) all the Joint Venturers' nickel-containing products produced at any such processing plant to a port or ports in a location approved by the Minister;

(b) all the Joint Venturers' production of nickel-containing products from the mining areas to Leonora in the event of a railway being constructed between those places; and

(c) insofar as practicable all other bulk commodities required for the Joint Venturers' operations hereunder. ;

(b) as to subclause (4) by substituting for subclause (4) the following subclause—

(4) The Joint Venturers shall pay to the State as advance payment of

Advance
payment
of freight.

freight rates payable under subclause (10) of this Clause the amount of one million five hundred thousand dollars (\$1 500 000) in three (3) instalments as follows—

- (i) an amount of four hundred thousand dollars (\$400 000) on the 30th day of June next following the production date;
 - (ii) an amount of five hundred thousand dollars (\$500 000) not later than one (1) year after the date for payment referred to in (i) above; and
 - (iii) an amount of six hundred thousand dollars (\$600 000) not later than two (2) years after the date for payment referred to in (i) above.
- (c) as to subclause (6) by substituting for subclause (6) the following subclause—

(6) The State shall improve the existing railway line between Leonora and Kalgoorlie to achieve a capacity to enable the Railways Commission to transport nickel-containing products at a quantity of up to but not exceeding one hundred and fifty thousand (150 000) tonnes per annum in accordance with the Joint Venturers' relevant approved proposal and all other bulk commodities as required by the Joint Venturers for their operations hereunder. ;

Improvement of railway line.

- (d) as to subclause (8) by substituting for the words "adequate notice of any change" in lines six and seven, the passage "not less than eighteen (18) months notice of any substantial change";

(7) by substituting for Clause 14 the following Clause—

14 (1) The State recognises—

Water.

- (a) that the Joint Venturers have an indicated annual average daily water requirement of twenty thousand (20 000) cubic metres, comprising both potable and non potable water for

Joint Venturers' water requirements.

their purposes (which amount or such other amounts as shall from time to time be agreed between the parties to be reasonable are hereinafter called "the Joint Venturers' daily water requirements");

- (b) that it has been established at the Joint Venturers' cost that an underground water resource of an indicated capacity adequate to meet the Joint Venturers' daily water requirements exists outside and at a considerable distance from the mining areas in the Depot Springs Water Reserve (gazetted on the 15th day of June, 1973) (hereinafter called "the Depot Springs Water Reserve");
- (c) that the Joint Venturers desire to continue to search for alternative underground water sources within and near the mining areas in accordance with the provisions of this Clause to meet the Joint Venturers' daily water requirements.

Search in
mining
areas.

(2) The Joint Venturers shall at their cost and in collaboration with the State continue to search for underground water within the mining areas. Where appropriate the Joint Venturers shall employ and retain experienced groundwater consultants. The Joint Venturers shall furnish to the Minister details of the results of their investigations and copies of the reports of such consultants as they become available.

Search
outside
mining
areas.

(3) If in the opinion of the Minister, the details and reports of the consultants pursuant to subclause (2) of this Clause indicate that any source of underground water in the mining areas is likely to be inadequate to supply the Joint Venturers' daily water requirements, and the Joint Venturers have not applied for a licence to draw water from the Depot Springs Water Reserve pursuant to subclause (5) of this Clause the parties hereto shall agree on a programme which shall be carried out by the State at the cost of the Joint Venturers to search for water inside and outside the mining areas. The State may at its discretion extend such water search to provide a quantity of water greater than that required to supply the Joint Venturers' daily water requirements, but in that event, the

cost of such search shall be shared by the parties hereto in such a manner as may be agreed to be fair in all the circumstances.

(4) If the investigations referred to in subclauses (2) and (3) of this Clause prove to the satisfaction of the Minister the availability of any suitable underground water source in or near the mining areas which can continue to be drawn on by the Joint Venturers without seriously affecting the water pressure in that water source beneath the mining areas or adjacent areas or the availability of water in the adjacent areas, (and the Joint Venturers' daily water requirements are not being met from the Depot Springs water Reserve pursuant to subclause (5) of this Clause) the State shall grant to the Joint Venturers a licence to develop and draw from that source without cost, the Joint Venturers' daily water requirements on such terms and conditions as are necessary to ensure good water resource management as the Minister may from time to time require and during the continuance of this Agreement grant renewals of any such licence PROVIDED HOWEVER that should that source prove hydrologically inadequate to meet the Joint Venturers' daily water requirements, the State may on at least six (6) months prior notice to the Joint Venturers (or on at least forty eight (48) hours prior notice if in the opinion of the Minister an emergency situation exists) limit the amount of water which may be taken from that source at any one time or from time to time to the maximum which that source is hydrologically capable of meeting as aforesaid.

Grant of
Licence.

(5) Notwithstanding any other provision in this Clause the State shall, on application made by the Joint Venturers not later than the 31st day of December, 1984, grant to the Joint Venturers a licence to develop and draw water for all or part of the Joint Venturers' daily water requirements (as the Joint Venturers may elect) from the Depot Springs Water Reserve without cost to the Joint Venturers and on such terms and conditions as are necessary to ensure good water resource management as the Minister may from time to time require and during the continuance of this Agreement grant renewals of such licence PROVIDED HOWEVER that should the Depot Springs Water Reserve prove hydrologically inadequate to meet the Joint Venturers' daily water requirements, the State may on at least six (6) months prior notice to the Joint Venturers (or on at least forty-eight

Depot
Springs
Water
Reserve.

(48) hours prior notice if in the opinion of the Minister an emergency situation exists) limit the amount of water which may be taken from the Depot Springs Water Reserve at any one time or from time to time to the maximum which that Reserve is hydrologically capable of meeting.

Develop-
ment of
water
sources.

(6) The Joint Venturers shall provide at their cost or with finance arranged by them and construct to standards and in accordance with designs approved by the State in accordance with the relevant approved proposal all necessary bores valves pipelines meters tanks equipment and appurtenances necessary to draw transport use and dispose of water drawn from sources licensed to the Joint Venturers under this Clause.

Alternative
water
source.

(7) Should the State at any time pursuant to the proviso to subclause (4) and/or (5) of this Clause limit the amount of water to be taken from any water source or if otherwise the Joint Venturers' daily water requirements cannot be met from any water source on a continuous basis the State shall with all reasonable expedition and in conjunction with and upon the request of the Joint Venturers search for new or additional underground water sources with a view to restoring or ensuring the full quantity of the Joint Venturers' daily water requirements. The Joint Venturers shall pay to the State a fair and reasonable proportion of the cost of investigating and developing such new and additional water sources as agreed between the Joint Venturers and the State.

State's
water
supply
obligation.

(8) The State shall use its best endeavours to supply the Joint Venturers with sufficient water (subject to availability of supply from other sources and to prior commitments if any to third parties) to meet that portion of the Joint Venturers' daily water requirements not obtainable from the water sources referred to in subclauses (4) and (5) of this Clause pending the establishment of new and additional water sources pursuant to subclause (7) of this Clause on such terms and conditions as the Minister may determine.

Investiga-
tion
of
surface
water.

(9) In the event of water supplies from available underground sources proving insufficient to meet the Joint Venturers' daily water requirements the Joint Venturers shall notwithstanding the provisions of subclauses (4) and (5) of this Clause collaborate with the State in an investigation of surface water catchments and storage

dams. The Joint Venturers shall if they propose to utilise such surface water, water catchments and storage dams pay to the State a sum or sums to be agreed towards the cost of such investigation and towards the cost of constructing any water storage dam or dams and reticulation facilities required.

(10) If during the currency of any licence granted under the provisions of this Clause the Minister is of the opinion that it would be desirable for water conservation purposes or water management purposes that sources of water licensed to the Joint Venturers be controlled and operated by the State as part of a regional water supply scheme the Minister may on giving six (6) months prior notice to the Joint Venturers of his intention revoke that licence and acquire the Joint Venturers' water supply facilities for a monetary consideration to be determined by the Minister. Immediately from the revocation of that licence the State shall, subject only to the continued hydrological availability of water from such sources, commence and thereafter continue to supply water to an amount and at a rate required by the Joint Venturers being the amount and rate to which the Joint Venturers were entitled under that revoked licence and the proviso to subclause (4) and/or (5) of this Clause and the provisions of subclause (7) of this Clause shall in like manner apply to this subclause.

State's
acquisition
of water
facilities.

(11) The State, after first having due regard to the Joint Venturers' daily water requirements and to the hydrological adequacy of existing water sources, may in its discretion develop all or any of the surface and/or underground water resources referred to in this Clause or construct any works in connection therewith to a greater capacity than that required to supply the Joint Venturers' daily water requirements but in that event the Joint Venturers' shall pay to the State a share of the cost of the system as so enlarged as may be agreed between the parties to be fair in all the circumstances.

Enlarged
water
capacity.

(12) The State may after first having due regard to the Joint Venturers' daily water requirements and to the hydrological adequacy of the applicable water source, upon not less than three (3) months prior notice to the Joint Venturers specifying the identity of the third party including where applicable the State and the estimated maximum daily and total quantity of

Third
party use.

water to be drawn by that third party and the period over which such drawing is to occur, grant to a third party rights to draw water or itself draw water from that water source PROVIDED HOWEVER that—

(a) where the Joint Venturers have paid (in whole or in part) any moneys in respect of the investigation development and utilisation of that water source the State shall require as a condition of the grant that where the third party is or will be a substantial drawer of water from that water source prior to the 31st day of December 1984 the third party (but not the State) shall reimburse to the Joint Venturers prior to the third party exercising its rights to draw water, a proportion of such moneys as the Minister determines is fair and reasonable; and

(b) where the Joint Venturers draw water from that water source the State shall ensure that it is a condition of the grant to third parties that in the event that the capacity of that water source is reduced, such reduction shall be first applied to the third parties and thereafter if further reduction is necessary the State's and the Joint Venturers' requirements shall be reduced in such proportion as may be agreed.

Payment
for water.

(13) The Joint Venturers shall pay to the State for water supplied by the State pursuant to subclauses (9) or (10) of this Clause a fair price to be agreed between the parties hereto having regard to the actual cost of operating and maintaining the supply and provision for replacement of the water supply facilities. Notwithstanding the foregoing provisions of this subclause, in respect of water supplied by the State to the Joint Venturers as aforesaid for domestic purposes the Joint Venturers shall pay to the State therefor charges as levied from time to time pursuant to the provisions of the Country Areas Water Supply Act, 1947.

(14) The Joint Venturers shall to the extent that it is practical and economical design construct and operate all plant hereunder so as—

Design of
plant.

- (a) to make use of brackish or saline water;
- (b) to recycle all water; and
- (c) to prevent loss of water by leakages, spillage or evaporation.

(15) The State shall ensure that no rights to mine minerals petroleum or other substances are granted over the area of any water source from which the Joint Venturers are drawing water or from time to time have the right to draw water hereunder unless the Minister reasonably determines that such grant is not likely to unduly prejudice or to interfere with the operations of the Joint Venturers hereunder and is not likely to render the water source incapable of supplying the Joint Venturers' daily water requirements on a continuous basis.

State to
restrict
adverse
grants.

(16) Nothing herein contained or implied (and in particular the provisions of subclause (10) of this Clause) shall derogate from or curtail the absolute priority of the Joint Venturers to utilise for the purpose of their operations under this Agreement any surplus capacity which might from time to time exist in any pipeline facilities constructed at the cost of the Joint Venturers for the transportation of water from a water source to any treatment plant operated by or for the Joint Venturers pursuant to this Agreement or to the townsite PROVIDED ALWAYS that the Joint Venturers shall not unreasonably withhold their approval to the use of such surplus capacity by the State and third parties on terms and conditions to be agreed between the parties hereto.

Joint
Venturers'
priority for
pipeline
facilities.

(17) The Joint Venturers may supply water to third parties including the State at a charge to be approved by the Minister after consultation with the Joint Venturers. The Joint Venturers shall have all the powers and authorities with respect to such water as are determined by the Minister which may include all or any of the powers of a water board under the Water Boards Act, 1904 and, with the consent of the Minister for Local Government, a local authority under the Local Government Act, 1960.

Charges
for supply
of water to
third
parties.

Rights in
Water and
Irrigation
Act.

(18) Any reference in the foregoing provisions of this Clause to a licence is a reference to a licence under the Rights in Water and Irrigation Act, 1914 and the provisions of that Act relating to water rights and licences shall except where inconsistent with the provisions of this Agreement apply to any water source developed for the Joint Venturers' purposes under this Agreement.

(8) by substituting for Clause 16 the following Clause—

Mineral
Claims in
the yellow
areas.

16. (1) The following provisions shall apply in respect of mineral claims which the Joint Venturers hold over the yellow areas (in this Clause called "yellow mineral claims") at the date application is made for a mineral lease pursuant to subclause (1) of Clause 15 (in this Clause called "the application date")—

Exemption
from
labour
conditions.

(a) The State shall ensure that subject to compliance with their obligations under this Agreement the Joint Venturers shall not be required to comply with the labour conditions imposed by the Mining Act.

Exploration
of the
yellow
areas.

(b) The Joint Venturers shall continue to carry out a programme of exploration in respect of the yellow mineral claims and report on the results of such exploration to the Minister for Mines at yearly intervals after the application date.

Surrender
of mineral
claims.

(c) Subject to the provisions of paragraphs (d), (e) and (f) of this subclause the Joint Venturers may surrender all or any of the yellow mineral claims at any time.

(d) On the expiration of the fourth year next following the application date the Joint Venturers shall surrender yellow mineral claims which (together with any yellow mineral claims previously surrendered pursuant to paragraph (c) of this subclause) total in area at least one third of the total area of the yellow mineral claims held by them at the application date.

(e) On the expiration of the fifth year next following the application date the Joint Venturers shall surrender such of the yellow mineral claims

which (together with any yellow mineral claims previously surrendered pursuant to paragraphs (c) and (d) of this subclause) will result in there having been surrendered a total in area of at least two thirds of the total area of the yellow mineral claims held by them at the application date.

(f) On the expiration of the sixth year next following the application date the Joint Venturers shall surrender all other yellow mineral claims held by them.

(2) The Joint Venturers shall have the right in respect of yellow mineral claims surrendered at the respective times of surrender referred to in paragraphs (d), (e) and (f) of subclause (1) of this Clause to apply for and have included in the mineral lease such of the areas of those surrendered yellow mineral claims as the Joint Venturers elect.

Incorporation of yellow mineral claims in the mineral lease.

(3) If the Joint Venturers desire to surrender any yellow mineral claims at any time other than the times specified in paragraphs (d), (e) and (f) of subclause (1) of this Clause and to have the areas of those yellow mineral claims included in the mineral lease, the Joint Venturers shall make application to the Minister who may if he is satisfied as to the justification therefor, include those areas in the mineral lease.

(4) Any land included in the mineral lease pursuant to subclause (2) or subclause (3) of this Clause shall be upon and subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary) and shall be deemed to be included in the mineral lease as and from the date of surrender of the applicable yellow mineral claim notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when made at the Joint Venturers' expense).

(5) The provisions of this Clause shall take effect notwithstanding the provisions of the Mining Act.

(9) by adding after Clause 30 a new Clause 30A as follows—

30A. Where the Joint Venturers or either of them whether before or after the execution of this Agreement execute and have registered in the

Substituted securities.

Department of Mines a mortgage over a mineral claim or a mineral lease in the mining areas or any interest therein, and the land the subject of that mineral claim or mineral lease, on the surrender of such claim or lease, becomes incorporated in the mineral lease, then provided the consent of the mortgagee is first obtained, the mineral lease shall notwithstanding the provisions of the Mining Act be deemed to be the subject of such mortgage as if the mineral lease had been referred to in the mortgage. A memorandum of any such mortgages shall be endorsed on the mineral lease in the order in which they appeared registered against any such mineral claim or mineral lease at the time of its surrender and shall be noted in the appropriate registers of the Department of Mines by the Principal Registrar who shall also endorse on the original and duplicate copies of such mortgages the fact of their having been registered as an encumbrance against the mineral lease.

(10) by adding after Clause 46 a new Clause 47 as follows—

Consulta-
tion.

47. The Joint Venturers shall during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that they propose to take with any third party (including the Commonwealth or any Commonwealth constituted agency authority instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

(11) by substituting for the First Schedule the following—

THE FIRST SCHEDULE

Nickel concentrates ex Leonora

1. The freight rates for the haulage of dry nickel concentrates by rail from a loading point to be agreed between the parties at Leonora to the Western Mining Corporation Limited Smelter at Hampton shall be:

<i>Tonnes per Annum</i>	<i>Rate per Tonne</i>
Up to 50 000 \$15.60
Over 50 000 and up to 100 000 \$12.80
Over 100 000 and up to 150 000 \$10.00

In this Schedule the expression "dry nickel concentrates" means nickel concentrates having not more than 0.3% by weight of moisture, and the expression "wet nickel concentrates" means all nickel concentrates having more than 0.3% by weight of moisture.

Matte (ex Hampton)

2. The freight rate for the haulage by rail of matte from the Western Mining Corporation Limited Smelter at Hampton to North Fremantle wharf shall be fixed by the Railways Commission after consultation with the Joint Venturers.

3. The freight rates set out in paragraph 1 of this Schedule are subject to the following additional conditions:

(i) Subject to subparagraph (ii) of this paragraph trains shall operate up to a maximum of six days per week commencing 12.01 a.m. Monday and ceasing 12.00 midnight on Saturday. The Railways Commission shall arrange a train operating pattern between Monday and Saturday (both days inclusive) consistent with the requirements of the Joint Venturers as advised from time to time under Clause 12 (8). The train operating pattern shall be based as far as is practicable on the utilisation of the maximum number of wagons possible per train and the least number of trains per week required to meet the haulage programme of the Joint Venturers and such trains shall be tabled at the time most convenient to the operational requirements of the Railways Commission.

(ii) If the needs of the Joint Venturers reasonably require operation on Sunday the Railways Commission shall use its best endeavours to so operate. The Joint Venturers shall reimburse the Railways Commission for any additional expenses which are payable as a consequence.

4. The freight rates set out in paragraphs 1 and 2 of this Schedule are subject to the following additional conditions:

(i) The Joint Venturers shall ensure that all wagons are loaded within the authorised axle load capacity and shall be subject to

such minimum load per wagon and per train as may be defined by the Railways Commission.

- (ii) The Joint Venturers shall ensure that all wagons are properly trimmed and secured to permit safe transport at all times.
- (iii) Unless otherwise determined by the Railways Commission the Joint Venturers shall be responsible for the movement of wagons at the loading and unloading points. The Joint Venturers shall ensure that the loading rate is not less than 750 tonnes per hour and the unloading rate is not less than 250 tonnes per hour. If such rates are not regularly adhered to the Railways Commission reserves the right to review the freight rates.
- (iv) Freight rates shall be paid by monthly payments in the month next following the month of haulage on the basis of the tonneages hauled charged at the rate or rates applicable to the anticipated annual tonnage and subject to annual adjustment after the expiration of each year with regard to the tonnage actually carried at the rate or rates applicable thereto.
- (v) In ascertaining the actual number of tonnes carried the method of measurement shall be agreed between the parties.

5. The Railways Commission shall provide wagons for nickel concentrates and/or matte haulage to meet the anticipated requirements of the Joint Venturers given to the State pursuant to the provisions of Clause 12 (8). If the Joint Venturers do not in any year provide a tonnage equivalent to the said anticipated requirements the Joint Venturers shall compensate the Railways Commission for loss of wagon usage to an amount determined by the Railways Commission.

Escalation

6. (i) *dry nickel concentrates up to 100 000 tonnes per annum*

The freight rates for dry nickel concentrates up to 100 000 tonnes annually as set out in paragraph 1 of this Schedule shall be

subject to variation in proportion to any variation of rail freight rates gazetted pursuant to By-law 55 made under the Government Railways Act.

(ii) *dry nickel concentrates over 100 000 tonnes per annum*

The freight rates for dry nickel concentrates over 100 000 tonnes per annum as set out in paragraph 1 of this Schedule are based on costs prevailing on the first day of July 1975 and shall be adjusted on the first day of January and July of each year (each such date in this paragraph referred to as "the date of adjustment") with the changes becoming effective on and from such date of adjustment in accordance with the following formula—

$$F1 = F + \left[.7F \left\{ .80 \left\{ \frac{HR1 - HR}{HR} \right\} + .05 \left\{ \frac{D1 - D}{D} \right\} + .15 \left\{ \frac{SR1 - SR}{SR} \right\} \right\} \right]$$

WHERE:

- F1 = New freight rate.
 F = The existing freight rate.
 HR = The average hourly rate payable as at 1st July, 1975.
 HR1 = The average hourly rate payable as at the date of adjustment.
 D = The list price (duty free) of bulk distillate sold to commercial users in Perth by BP Australia Limited as at 1st July, 1975.
 D1 = The list price (duty free) of bulk distillate sold to commercial users in Perth by BP Australia Limited as at the date of adjustment.
 SR = Price of heavy steel rails per tonne c.i.f. Port of Fremantle as ascertained from price schedule covering despatches from Broken Hill Proprietary Company Limited as at 1st July, 1975.

SR1 = The price of heavy steel rails per tonne c.i.f. Port of Fremantle ascertained as aforementioned as at the date of adjustment.

The rates applicable on the 1st July, 1975, are—

	Hourly rates.
	cents.
1st Class Driver	381.25
1st Class Guard	336.50
Trackman	284.50
	<hr/>
Total	1002.25
	<hr/>
<i>Average hourly rate</i>	334.08

Price of distillate per litre 6.390 cents. Price of heavy steel rails per tonne c.i.f. Port of Fremantle \$175.00.

PROVIDED ALWAYS that if at any time there is a change in—

- (a) the average hourly rate by the operation of any award or other wage determination; or
- (b) the list price (duty free) of distillate in Perth; or
- (c) the price of heavy steel rails per tonne c.i.f. Port of Fremantle (as ascertained aforesaid),

and such change is effective from a date prior to the last date of adjustment a new freight rate or freight rates as the case may be shall be calculated and shall apply from the date of adjustment next following the date from which any such change as aforesaid is effective and such new freight rate or freight rates shall be substituted for the freight rate that would have applied but for the application of the provisions of this paragraph.

Adjustments made in accordance with this formula shall be expressed in a figure of dollars per tonne and calculated to 4 decimal places of a dollar and in doing so the fifth decimal place shall also be

calculated so that if the fifth decimal place is .5 or above, the fourth decimal place shall be increased by 1.

This formula shall be subject to review by the Railways Commission after consultation with the Joint Venturers on the first July 1980 and thereafter at five-yearly intervals.

(iii) *matte ex Hampton*

The freight rate to be fixed by the Railways Commission as referred to in paragraph 2 of this Schedule for matte ex Hampton shall be subject to escalation in accordance with the formula set out in subparagraph (ii) of this paragraph.

7. In the event that the Joint Venturers require the Railways Commission to transport wet nickel concentrates, matte or nickel metal from Leonora to a port or ports in a location approved by the Minister the freight rate applicable shall be fixed by the Railways Commission after consultation with the Joint Venturers.

Nickel
containing
products
ex
Leonora.

8. Subject to the Joint Venturers making the advance payments of freight rates pursuant to Clause 12(4):—

Freight
rate
rebates.

(a) the freight rates for nickel concentrates (whether dry or wet) will be reduced by a sum of \$2.70 per tonne for the first 935 000 tonnes railed from Leonora for the Joint Venturers;

(b) if the Joint Venturers transport nickel containing products other than those referred to in subparagraph (a) of this paragraph then the rebate in respect of those other nickel containing products will be fixed by the Railways Commission after consultation with the Joint Venturers on the basis that the Joint Venturers will receive a total rebate of \$2 524 500 on all nickel containing products transported by them from Leonora but in no event shall the rebate on such other nickel containing products be lower than \$5 per tonne.

9. All commodities not mentioned in this Schedule shall unless otherwise determined by the Railways Commission be carried subject to By-law 55 made under the Government Railways Act.

Other
commodities.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said THE
HONOURABLE SIR CHARLES WALTER
MICHAEL COURT, O.B.E., M.L.A., in
the presence of } CHARLES COURT

ANDREW MENSAROS
Minister for Industrial Development

THE OFFICIAL SEAL of WESTERN
SELCAST (PTY) LIMITED was
hereunto affixed by authority of the
Directors and in the presence of } [C.S.]

Director P. M. WREFORD
Secretary S. J. LEWIS

I Stanley James Lewis of 229 Marmion
Street, Cottesloe, Western Australia
hereby certify that the Official Seal of
Western Selcast (Pty) Limited was
hereunto affixed by me on the Second
day of September 1976 in Perth
Western Australia } S. J. LEWIS

THE COMMON SEAL of MOUNT ISA
MINES LIMITED was hereunto affixed
by authority of a resolution of the
Board of Directors in the presence of } [C.S.]

Director LEO JOHN CARDEN L. J. CARDEN
Secretary RAYMOND BROOK BYERS R. B. BYERS
